

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

Larry E. Ealy,

Plaintiff,

:

Case No. 3:09-cv-10

- vs -

:

Chief Judge Susan J. Dlott
Magistrate Judge Michael R. Merz

Judge James E. Ruppert, et al.,

:

Defendants.

:

ORDER ADOPTING REPORT AND RECOMMENDATIONS

The Court has reviewed the Report and Recommendations of United States Magistrate Judge Michael R. Merz (Doc. #15), to whom this case was referred pursuant to 28 U.S.C. § 636(b). Plaintiff timely objected to the Report and Recommendations on May 26, 2009, and is entitled to review *de novo* of the recommendation.

Magistrate Judge Merz recommended dismissing the case because Plaintiff had failed to make service of process on the remaining Defendants in this case within the time allowed by Fed. R. Civ. P. 4(m). Plaintiff had been specifically notified well in advance of his duty to make service within that time (See Doc. No. 12).

Plaintiff's objection consists entirely of his statement that he had filed an Affidavit of Disqualification against both the undersigned and Magistrate Judge Merz in this case. No such Affidavit has been filed in this case and Plaintiff has not otherwise shown a basis for disqualification of either of these judicial officers. Even if they were disqualified, that would not give a plaintiff the privilege of ignoring Fed. R. Civ. P. 4(m).

Accordingly, Plaintiff's Objections are overruled and the Report and Recommendations are adopted. The clerk will enter judgment dismissing this action with prejudice.

June 6, 2009.

S/Susan J. Dlott

Chief Judge Susan J. Dlott
United States District Court